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Supreme Court of the United States

OCTOBER TERM, 1951

NO. 38

DOMINIC PALMER, Petitioner,

v.

STANLEY P. ASHE, Warden, Western State Penitentiary, Pittsburgh, Pennsylvania, Respondent.

On Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.

BRIEF FOR RESPONDENT

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INDEX.

	PAGE
Questions Presented	1
Respondent's Statement of the Case	2
Summary of Argument	6
Argument	7
I. The acceptance by the court of petitioner's plea of guilty without providing him with counsel, in the absence of special circumstances tending to result in injustice or fundamental unfairness, did not deny him due process of law	7
II. The Common Pleas Court properly dismissed the petition for habeas corpus upon consideration of the petition and answers and the original record, without hearing oral testimony, where the presence of due process was evident on the face of the record	13
III. The dismissal of the petition for habeas corpus was proper in view of the fact that the petition was not filed until 18 years after the sentence, without explanation for the delay, and makes unsupported allegations which are now difficult or impossible to controvert because of the delay	15
Conclusion	17

CITATIONS.

CASES:

Betts v. Brady, 316 U.S. 455, 62 S. Ct. 1252 . . . 7, 12, 17

Bute v. Illinois, 333 U.S. 640, 68 S. Ct. 763 . . . . . 7, 12

Commonwealth v. Curry, 285 Pa. 289, 132 A. 370 . . 15

CASES: PAGE

Commonwealth ex rel. DePoe v. Ashe, 167 Pa. Super. 23, 74 A 2d 767 ..... 13, 15
Commonwealth ex rel. Hovis v. Ashe, 165 Pa. Super. 30, 67 A 2d 770 7
Commonwealth ex rel. Master v. Baldi, 166 Pa. Super, 413, 72 A 2d 150 13
Commonwealth ex rel. McGlinn v. Smith, 344 Pa. 41, 24 A 2d 1 ..... 7, 13, 15
Commonwealth ex rel. Quinn v. Smith, 144 Pa. Super. 160, 19 A 2d 504 16
Commonwealth ex rel. Townsend v. Burke, 361 Pa. 35, 63 A 2d 77 7
Ex parte Cole, 208 P. 2d 193 16
Ex parte Hunt, 225 P. 2d 193 16
Ex parte Schneider, 217 P. 2d 934 16
Gibbs v. Burke, 337 U.S. 773, 93 L. Ed. 773 8
Hawk v. Olson, Warden, 326 U.S. 271, 66 S. Ct. 116 13
People ex rel. Asaro v. Morhous, Warden, 52 N.Y.S. 210 12
People v. Bassinger, 403 Ill. 108, 85 N.E. 2d 758 .. 12
Townsend v. Burke, 334 U.S. 736, 68 S. Ct. 1252 .. 8, 14
Uveges v. Pennsylvania, 335 U.S. 437, 68 S. Ct. 184 ..... 8, 14

STATUTES:

Pennsylvania Juvenile Court Act of 1939, P.L. 394 (11 Purdon's Pa. Stat. Sec. 243-2) 8
Pennsylvania Mental Health Act of 1923, P.L. 998 (50 Purdon's Pa. Stat. Sec. 51) 10

OTHER AUTHORITIES:

Federal Bureau of Investigation, Annual Bulletin 1950, Volume XXI, No. 2 8

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On Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.

BRIEF FOR RESPONDENT

QUESTIONS PRESENTED

1. Where a state court accepts a plea of guilty from a defendant over 21 years of age appearing without counsel, does such lack of counsel constitute denial of due process of law?

2. Must a state court grant a hearing before dismissing a petition for *habeas corpus* alleging denial of due process, where the presence of due process is evident from the face of the record?

3. Is a court justified in dismissing a petition for *habeas corpus* which asserts denial of due process, where the petition contains unsupported allegations concerning circumstances at or prior to sentence, where the petitioner has delayed filing his petition until more than 18 years after the sentence without averring any cause for such delay, and where, by reason of such delay, it is difficult if not impossible to controvert many of the allegations of the petition?

RESPONDENT'S STATEMENT OF THE CASE

A writ of certiorari was granted by this court on April 30, 1951, to review an order (R. 30) of the Supreme Court of Pennsylvania refusing to allow an appeal from an order (R. 17) of the Superior Court of Pennsylvania affirming an order (R. 12) of the Common Pleas Court of Allegheny County, Pennsylvania, dismissing the petition of Dominic Palmer for a writ of *habeas corpus*.

Petitioner, Dominic Palmer, is now serving a sentence of not less than 5 nor more than 15 years imposed on February 18, 1931, by the Court of Oyer and Terminer of Allegheny County, Pennsylvania, upon his plea of guilty to an indictment at No. 23 January Sessions, 1931, charging robbery (R. 6). This sentence was made to begin at the expiration of another sentence of not less than 5 nor more than 15 years imposed by the same court on the same day at No. 24 January Sessions, 1931, on petitioner's plea of guilty to an indictment charging attempted robbery (R. 6), and did begin on August 26, 1942, when parole was granted on the sentence first imposed (R. 5).

Complaint, Arrest and Preliminary Hearing.

Petitioner was arrected December 20, 1930, and was given a hearing on December 23, 1930 (R. 9) before a committing magistrate upon a complaint, duly sworn to, charging the offenses for which he was subsequently indicted and sentenced. The records of the Clerk of Courts of Allegheny County, Pennsylvania, at No. 24 and 23 January Sessions, 1931, show that the petitioner was present at the hearing and that witnesses for the Commonwealth, including the victims of the offenses charged, were produced, sworn, and examined (R. 8, 9).

Indictment, Trial, Plea, and Sentence.

On January 9, 1931, the grand jury, after hearing witnesses, returned true bills on the indictments charging the offenses (R. 21, 22). On January 16, 1931, petitioner appeared in open court and entered pleas of guilty to the indictments (R. 6). Petitioner again appeared in open court on February 18, 1931, at which time the two consecutive sentences were imposed.

The record of the plea and sentence is silent as to the name of any attorney appearing for petitioner, as to any request for counsel by petitioner, and as to any offer of counsel to petitioner.

Petitioner was granted a parole on the sentence he is now serving and was released on September 19, 1947 (R. 5). On April 1, 1949, he was recommited for violation of parole (R. 5). The sentence he is now serving will not expire until August 26, 1957 (R. 5).

The Habeas Corpus Proceedings.

The petition for a writ of *habeas corpus* was filed in the Common Pleas Court on October 11, 1949 (R. 1). Petitioner does not complain therein that he was mentally deficient at the time of his plea and sentence, but avers only that he was then a "young irresponsible boy,"[1] and that he had a background of "having spent several years in Polk[2] (because he was mentally abnormal), as well as several years in Morganza, * * *"

An answer was filed by the district attorney denying many of the allegations of the petition on the basis of records in the office of the Clerk of Courts. Other allegations could not be denied because no transcript of the proceedings had been filed, the sentencing judge (Judge George V. Moore) was deceased, and the other officials who had been present in court at the time of sentence, more than 18 years before, were deceased, or

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1. Petitioner was then past 21.

2. Petitioner was discharged from Polk State School on September 10, 1920 (R. 5), more than 10 years before the imposition of the sentences complained of. However, on October 31, 1921, a year after his discharge from Polk, he was committed to Thorn Hill School for larceny. He was released on parole on April 14, 1924, returned for larceny and delinquency on June 30, 1924, and discharged on June 1, 1926 (R. 6). A year later, on July 21, 1927, he was committed to the Pennsylvania Training School at Morganza for breaking and entering, paroled after 2½ years, returned for parole violation on August 4, 1930, discharged on December 18, 1930, and, on the same day he was discharged, committed the two offenses for which he received the sentences he now complains of (R. 6, 7). Neither Thorn Hill School nor Pennsylvania Training School is an institution for mental defectives; both are correctional institutions for younger criminal offenders.

could not be located, or had no recollection of what had transpired.

Upon consideration of the petition and answers and on the basis of the original record (R. 11) submitted by the clerk, Judge Rowand of the Court of Common Pleas filed an opinion (R. 10, 11) and entered an order (R. 12, 13) dismissing the petition and denying the writ.

Petitioner appealed from the order of Common Pleas Court to the Superior Court of Pennsylvania. The Superior Court affirmed the order in a *per curiam* opinion (R. 14-16). The Supreme Court of Pennsylvania denied, without an opinion, a petition for an allowance of an appeal from the order of the Superior Court (R. 30).

Petitioner's application to the Supreme Court of the United States for a writ of certiorari was granted on April 30, 1951 (R. 31).

SUMMARY OF ARGUMENT

The due process clause of the Fourteenth Amendment does not require a state court in a criminal proceeding to offer a defendant counsel or to advise him of his right to counsel, where the defendant is charged with a non-capital offense. It is only where special circumstances tending to result in injustice or fundamental unfairness are present that a failure to provide a defendant with counsel may deny him due process of law. No such special circumstances were present in this case.

Petitioner, a man 21 years of age, with a record of prior offenses, was not denied due process of law when the state court allowed him to enter a plea of guilty without counsel. The mere fact that he had at one time, at the age of 10, been in a mental institution did not render his plea of guilty void because he did not have counsel.

The dismissal without hearing of the petition for writ of *habeas corpus* was proper, because the petition did not allege that mental deficiency existed at the time of sentence or that prior mental deficiency resulted in any injustice, and failed to make out a *prima facie* case of the denial of due process of law.

Petitioner failed in the court below to meet the burden of establishing a denial of due process, and may not now attempt to establish such a denial by allegations which were not before the court below.

ARGUMENT

I. The acceptance by the court of petitioner's plea of guilty without providing him with counsel, in the absence of special circumstances tending to result in injustice or fundamental unfairness, did not deny him due process of law.

The appellate courts of Pennsylvania have repeatedly held that, where a non-capital offense is charged, the due process clause of the Fourteenth Amendment to the United States Constitution does not require a Pennsylvania court to provide an accused with counsel, where none is asked for, nor does it prohibit a court from accepting a plea of guilty from an uncounseled defendant. *Commonwealth ex rel. McGlinn v. Smith,* 344 Pa. 41, 24 A. 2d 1 (1942); *Commonwealth ex rel. Townsend v. Burke,* 361 Pa. 35, 63 A. 2d 77 (1949); *Commonwealth ex rel. Hovis v. Ashe,* 165 Pa. Super. 30, 67 A. 2d 770, (1949), affirmed 364 Pa. 81, 70 A. 2d 630, cert. den. 339 U.S. 970, 79 S. Ct. 990.

This court has likewise ruled that, where a non-capital offense is charged, a state court is not required by the due process clause of the Fourteenth Amendment to inquire as to the defendant's desire to be represented by counsel or to assign counsel to him. *Bute v. Illinois,* 333 U.S. 640, 68 S. Ct. 763 (1948); *Betts v. Brady,* 316 U. S. 455, 62 S. Ct. 1252 (1941).

It is only where there are, in addition to the gravity of the offenses charged, other factors present which tend to result in injustice or in fundamental unfairness that the accused must have legal assistance under the

Fourteenth Amendment. *Uveges v. Pennsylvania,* 335 U.S. 437, 69 S. Ct. 184 (1948), (the extreme youth of the accused); *Gibbs v. Burke,* 337 U. S. 773, 93 L. Ed. 773 (1949) (accused was his own counsel and incompetent and prejudicial evidence was admitted); *Townsend v. Burke,* 334 U.S. 736, 68 S. Ct. 1252 (1945) (improper conduct of the trial judge).

There was in this case, at or prior to the sentencing of petitioner without counsel, no circumstance which tended to result in any injustice or fundamental unfairness to him.

Petitioner at the time of the entry of his pleas was 21 years old. In this respect alone, his case is readily and clearly distinguishable from *Uveges v. Pennsylvania,* 335 U.S. 437, upon which he so strongly relies. Uveges at the time of his plea was 17 years old. This difference of four years at this period of life is the difference between a minor and an adult. The legislature of Pennsylvania has declared 18 to be the age at which the jurisdiction of the juvenile court terminates and the jurisdiction of the criminal court begins.[3] According to statistics issued by the Federal Bureau of Investigation,[4] 21.4% or more than one-fifth of *all* offenders arrested for robbery are in the 18-20 age group between Uveges and petitioner. The law recognizes that persons

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3. Act of June 15, 1939, P. L. 394, Sec. 1, 11 Purdon's Pa. Stat. sec. 243-2.

4. Uniform Crime Reports issued by the Federal Bureau of Investigation, Annual Bulletin 1950, Volume XXI, No. 2, page 111:

Offense charged: Robbery
Percentage arrested under 18 years of age: 7.0
Percentage arrested under 21 years of age: 28.4
Percentage arrested under 25 years of age: 54.1

reaching the age of 21 have attained maturity of judgment with ability to manage their own affairs, by granting to persons of that age the right to vote and to enter into enforceable contracts and by relieving them generally of the legal disabilities of infancy. Thus petitioner's age of 21 was insufficient to obligate the court to refuse his plea of guilty without counsel.

Petitioner relies heavily in his brief upon the contention that he was mentally deficient at the time of his plea and that, for that reason, the court denied him due process when it accepted his plea without counsel. It should be noted that the petitioner does not allege in his petition for writ of *habeas corpus* (R. 2-4) that he was mentally deficient at the time of his plea and sentence. Petitioner merely states information concerning his background as follows (R. 2):

> "Second, your petitioner, a young irresponsible boy, having spent several years in Polk (because he was mentally abnormal) * * *"

This statement does not necessarily imply that the petitioner was mentally deficient at the time of his plea ten years after his discharge from Polk State School. In fact the contrary appears from the record. Not only had petitioner been finally discharged from Polk State School at the age of 10 (R. 5), but he had in the intervening period of more than 10 years been discharged two times each from Thorn Hill School and Pennsylvania Training School (R. 6), both correctional institutions for young, but otherwise normal offenders. If the officials of either of the last-named institutions had found petitioner to be mentally defective at any time during his commitment to them, it would have been

mandatory for them under Pennsylvania statute[5] to have petitioner transferred to a proper institution for mental defectives. The sentencing court was entitled to presume that the institution officials complied with the law, and that, therefore, petitioner was not mentally deficient when he was discharged from Pennsylvania Training School on December 18, 1930, the same day on which he committed the two offenses here involved and less than a month before he voluntarily pleaded guilty to them.

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5. The Mental Health Act of July 11, 1923, P. L. 998, Art. III, Sec. 311 as amended April 27, 1927, P. L. 431, Sec. 1, 50 Purdon's Pa. Stat., Sec. 51, provides as follows:

> "When any person detained in any prison, penitentiary, reformatory, or other penal or correctional institution, whether awaiting trial or undergoing sentence, except upon conviction for murder in the first degree, shall, in the opinion of the superintendent, jail physician, warden, or other chief executive officer of the institution, or other responsible person, be mentally defective; or when any person charged with a criminal offense and released on bail pending trial therefor, shall in the judgment of any responsible person, be a mental defective,—the said superintendent, jail physician, warden, other chief responsible officer of the institution, or other responsible person, shall in the case of a person detained in an institution, and said responsible person in other cases may, make application, upon a form prescribed by the department, to a law judge of the court having jurisdiction of the charge against said person believed to be mentally defective, or under whose order he is detained, for the examination, and if necessary, the commitment of said person to a proper institution for mental defectives."

The other contentions made by petitioner likewise fall upon inspection of the record. His contention that he did not understand the meaning of a plea of guilty is not contained in his petition for writ of *habeas corpus*. Yet the sentencing judge was fully justified at the time he received the plea in finding that petitioner understood the meaning of "guilty" in view of the fact that petitioner had been four times committed to correctional institutions, twice for larceny, once for breaking and entering, and once for an unspecified parole violation (R. 6). Petitioner's contention that he did not know the nature of the crimes with which he was charged (R. 3, 4) falls upon inspection of the record which shows that he was twice—once before the commiting magistrate and once before the sentencing judge—confronted by witnesses who testified against him concerning the offenses charged (R. 9, 11).

In view of the foregoing, it is apparent that the acceptance of a plea of guilty without counsel from petitioner, a man of full age, and without indication of mental deficiency, after he was confronted with witnesses as to the offenses charged, did not result in any injustice or fundamental unfairness.

Petitioner's contention that he was not offered counsel or advised of his right to have counsel (R. 3) was not denied, because no transcript of the proceedings at plea and sentence was filed; the sentencing judge was deceased, and all other officials who had been present in court at the proceedings, more than 18 years before, were deceased, could not be located, or had no recollection of what had transpired. However, even in the absence of such denial, the bare allegation of petitioner

should not be permitted to overcome the presumption that the sentencing court discharged its duties in a constitutional manner and in a manner which did not result in any unfairness or injustice to the petitioner. In *Bute v. Illinois,* 333 U.S. 640, 68 S. Ct. 763 (1948) the court said at page 672:

> "If any presumption is to be indulged it should be one of regularity rather than of irregularity. * * * in the complete absence of any showing to the contrary, such a presumption of regularity indicates that the court constitutionally discharged rather than unconstitutionally disregarded its state and federal duties to the petitioner, including those relating to his right, if any, to the assistance of counsel."

See also *People ex rel. Asaro v. Morhous, Warden,* 52 N.Y.S. 210 (1944); *People v. Bassinger,* 403 Ill. 108, 85 N.E. 2d 758 (1948).

Where there is an alleged denial of due process of law because of the failure of a defendant to be represented by counsel or to be assigned counsel, each case must be decided upon its own facts. *Betts v. Brady,* 316 U.S. 455, 62 S. Ct. 1252 (1941). Under the facts of this case, there was no failure to observe that fundamental fairness essentional to the concept of justice and there was not such a set of circumstances as would lead to the conclusion that due process was denied.

II. The Common Pleas Court properly dismissed the petition for habeas corpus upon consideration of the petition and answers and the original record, without hearing oral testimony, where the presence of due process was evident on the face of the record.

Where a petitioner alleges a denial of due process of law, the burden is on him to establish facts and circumstances which amount to a denial of due process. *Hawk v. Olson, Warden,* 326 U.S. 271, 66 S. Ct. 116 (1945); *Commonwealth ex rel. McGlinn v. Smith,* 344 Pa. 41, 24 A. 2d 1 (1942); *Commonwealth ex rel. Master v. Baldi,* 166 Pa. Super. 413, 72 A. 2d 150, (1950). Although the writ of *habeas corpus* is a writ of right, it does not issue as of course, but only upon cause shown. *Commonwealth ex rel. McGlinn v. Smith, supra; Commonwealth ex rel. DePoe v. Ashe,* 167 Pa. Super. 23, 74 A. 2d 767 (1950).

Petitioner in this case failed to establish in his petition that there was a denial of due process of law. He alleged that he was denied due process of law because he was not offered counsel or advised of his right to have counsel (R. 3), and because of other reasons which he summarized (R. 4). The matter of his right to counsel has been discussed above. The other allegations in his summary statement were examined by the court, which had before it the record of the original proceedings, and were found to be false on the face of the record (R. 11). Thus, after consideration of the petition in the light of the original record, the court was justified in finding that the petitioner had failed to meet his burden of establishing that due process was denied.

In view of the fact that petitioner filed his petition without counsel, it is conceded that he should not be and he has not been held to strict standards of pleading. Accordingly, the allegation of his second paragraph (R. 2), which gives his background and refers to himself as a "young, irresponsible boy, having spent several years in Polk (because he was mentally abnormal) * * *" was considered in conjunction with his eighth paragraph (R. 3) which deals with the matter of counsel. But, even adding thereto the cases which he cites, "Uveges v. Pennsylvania ..... U.S. .....; Townsend v. Burke ..... U.S. ....." (R. 3), petitioner did not establish a *prima facie* case of denial of due process, in view of the fact that the record clearly showed that petitioner's case was similar neither to the *Uveges* case, where the defendant was only 17 years old, nor to the *Townsend* case, where there was grossly improper conduct on the part of the sentencing judge. Further, the record (R. 5, 6) showed that petitioner had been released from Polk State School more than ten years prior to the time the sentences complained of were imposed, and had in the meantime been committed or recommitted four times to two other state institutions for juvenile, but otherwise mentally normal, offenders. Moreover, petitioner did not aver anywhere in his petition that his alleged mental deficiency at the time of his sentence prevented him from receiving justice, or that any advantage was taken of him because of such alleged mental deficiency. When the court considered these matters, and also the fact that the allegations concerning the failure to be advised of the charges, the failure to be confronted by witnesses, and the plea to "unspecified charges", were patently false on the face of the record, there was no error in its find-

ing that the alleged denial of due process of law was not established.

The dismissal of the petition without granting a hearing was proper, in view of the fact that Pennsylvania law does not require a hearing on a petition for a writ of *habeas corpus* where the petitioner has failed to show any cause or to make out a *prima facie* case for the issuance of the writ. *Commonwealth v. Curry,* 285 Pa. 289, 132 A. 370 (1926); *Commonwealth ex rel. McGlinn v. Smith,* 344 Pa. 51, 24 A, 2d 1 (1942); *Commonwealth ex rel. DePoe v. Ashe,* 167 Pa. Super. 23, 74 A. 2d 767 (1950). The petition of Palmer did not make out a *prima facie* case of denial of due process nor did it show any cause for the issuance of the writ.

III. The dismissal of the petition for habeas corpus was proper in view of the fact that the petition was not filed until 18 years after sentence, without explanation for the delay, and makes unsupported allegations which are now difficult or impossible to controvert because of the delay.

The petition for writ of *habeas corpus* was not filed until October 11, 1949 (R. 2), 18 years and 9 months after the commitment. Included in the petition are allegations which were practically impossible to deny in view of the fact that no transcript of the proceeding had been filed, the sentencing judge was deceased, and the other officials who had been present in court, more than 18 years before, were deceased, or could not be located, or had no recollection of the proceeding. Respondent thus was obviously severely handicapped and prejudiced by reason of petitioner's unexplained delay of more than 18 years.

Courts must be extremely careful in granting writs of *habeas corpus* in such cases of long unexplained delay, especially where, as here, some of the allegations are patently false.

The doctrine of laches is applicable to *habeas corpus* petitions. In *Commonwealth ex rel. Quinn v. Smith,* 144 Pa. Super. 160, 19 A. 2d 504 (1941), the petitioner delayed filing his petition until 16 years after his commitment. The court said at page 164:

> "But, in any event, we are of the opinion that his delay in making this application until such a great length of time had elapsed that the judge who presided at the trial has no recollection of what occurred there, as respects, the relator being represented by counsel, or refusing or waiving the appointment of counsel for him, and five of the six witnesses for the prosecution at the trial have died or cannot be found, and the sixth has no recollection of the trial of the case,—there being no stenographic notes or notes of testimony of the trial—convicts him of such laches as to call for a refusal of the prayer of his petition, and prevents his discharge from confinement."

See also *Ex parte Cole,* 208 P. 2d 193 (1949); *Ex parte Hunt,* 225 P. 2d 193 (1950); and *Ex parte Schneider,* 217 P. 2d 934 (1950).

In the present case the writ was properly refused in the absence of an explanation for the long delay in filing it.

CONCLUSION

Where denial of due process of law is alleged because a defendant was not advised of his right to counsel, and where defendant pleads guilty to the crime charged, each case must be decided on its own facts. *Betts v. Brady*, 316 U.S. 455, 62 S. Ct. 1252 (1941). What may amount to a denial of due process of law in one set of circumstances, may not be such in another. It does not appear in this case that petitioner, a man 21 years old at the time he entered his plea of guilty, suffered such injustice as to amount to a denial of due process of law.

The Common Pleas Court properly dismissed the petition without a hearing, particularly in view of the fact that there was no allegation of mental deficiency at the time the plea of guilty was entered, that the petition did not make out a *prima facie* case of the denial of due process of law, and that the petition was filed after a long, unexplained, and prejudicial delay.

The Supreme Court of Pennsylvania did not err in refusing to allow an appeal from the order of the Superior Court of Pennsylvania, affirming the order of the Court of Common Pleas of Allegheny County, dismissing the petition for writ of *habeas corpus*.

Respectfully submitted,

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